

AO 243 (Rev. 09/17)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	
Name (under which you were convicted): Julio Cesar Gonzalez-Hernandes		Docket or Case No.: 7:22-cr-137-MA	
Place of Confinement: F.C.I. Sandstone		Prisoner No.: 66818-019	
UNITED STATES OF AMERICA		Movant (include name under which convicted) Gonzalez-Hernandez	
V.			

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

Southern District of Texas, McAllen Division

(b) Criminal docket or case number (if you know): 7:22-cr-000137-MA

2. (a) Date of the judgment of conviction (if you know): 12-9-22

(b) Date of sentencing: 12-28-22

3. Length of sentence: 87 months

4. Nature of crime (all counts):

X4 counts of unlawful transportation of illegal aliens

X1 Count of possession of firearm by illegal alien

X1 Count of Unlawful entry into the U.S.

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☐

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8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

- (a) Name of court: _____
- (b) Docket or case number (if you know): _____
- (c) Result: Judgment affirmed
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____

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(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Ineffective Assistance resulting in due process violation
counsel failed to ensure sufficient factual basis in plea-agreement

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The plea-agreement, in this matter, is devoid of the essential facts..
 1. Sufficient explanation or notice of the nature of counts, including charges and penalties, or any of the actions alleged, by the U.S.
 2. Any evidence or claims the United States was prepared to present, i.e. factually based allegations.
 3. A "stipulation of facts" used to support the agreement, including any admissions or acknowledgement, as to the offences alleged.
 4.) Stipulation or agreement of the application of the Sentencing Guidelines.
 5.) Financial Matters, including the \$200.00 special assessment.
 6.) Enhancements considered, or increase to the mandatory minimum.
 7.) Status of "cooperation" or recommendation of 5k1:1)
 8.) Sentencing provisions.

The plea-agreement neither points to the indictment nor the P.S.I.R. to establish the lacking factual basis.

(b) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

Ineffective assistance not cognizable in direct appeal.

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

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(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Ineffective assistance- Counsel failed to properly advise**movant regarding P.S.I.R. report, as required by F.R.C.P. 321**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
 Counsel did not provide access to P.S.I.R., to review, until the day of sentencing. The P.S.I.R. contains essential information, i.e. the Probation Office's sentencing calculations, relevant allegations and recommendations. Movant was denied the opportunity to review the contents of the P.S.I.R. with counsel prior to entering the plea-agreement, rendering Movant unaware of the essential facts of the case. There exists a substantial likelihood, given the nature of the issues presented, that if Movant had prior access and sufficient time to review the information contained in the P.S.I.R., with counsel, may have altered Movant's decision to plead "guilty", which would have resulted in a different outcome; had Movant had access to crucial mitigating information, if any existed, he may have opted to proceed to trial and been found "not guilty". Because Movant was denied the ability to raise objections to inaccurate information; due process.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

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GROUND THREE: Ineffective Assistance- Counsel failed to object to, or file motion to quash indictment, for failure to inform.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Movant was sentenced on information neither contained in the indictment, nor the plea-agreement. The indictment failed to inform the Movant of the allegations against him, sufficiently, in order to prepare a defense. Movant was sentenced on allegations of "torturing" and "discharging a firearm". An indictment is required by law to state the plain accusations against a defendant. This lack of adequate representation is a due process violation.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

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(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: Ineffective Assistance- Counsel failed to raise objections, at any point during federal proceedings, to inaccurate information in P.S.I.R.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The P.S.I.R. alleges Movant knowingly possessed a firearm, at the time of arrest. This information is inaccurate. There was no firearm found on Movant's person, at the time of arrest. The firearm was located, by the police, in a vehicle, not registered to the Movant. Counsel was informed of this issue early on in his representation of Movant. Counsel's failure to object to this pertinent piece of false information is a complete lack of adequate representation. This fundamental defect results in a miscarriage of justice.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

Carlos Moctezuma Garcia

(b) At the arraignment and plea:

Carlos Moctezuma Garcia

(c) At the trial:

(d) At sentencing:

Carlos Moctezuma Garcia

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

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Therefore, movant asks that the Court grant the following relief:

Vacate and remand for re-sentencing or any other just and worthy relief
or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 2-22-24
(month, date, year)

Executed (signed) on 2-22-24 (date)

Julio Cesar Gonzalez Hernandez
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

AFFIDAVIT

State of MINNESOTA

County of PINE

I, Gonzalez-Hernandez, do hereby make the following statements freely:

1. My name is Gonzalez Hernandez
2. I am over 18 years old.
3. I currently reside at F.C.I. Sandstone in Minnesota

3. I was born on 9/8/1989

X X XIX H XanX HXHXeIXStaxex XCixxzenx

5. My place of birth was MEXICO

6. My social security number is N/A

DECLARATION UNDER THE PENALTY OF PERJURY

I, GONZALEZ-HERNANDEZ declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. §1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both.

Movant requests that Judge Alvarez recuse himself, pursuant to 28 U.S.C. 455(a) and 28 U.S.C. 455(b)(1). Recusal is necessary where bias is apparent. *Bradshaw v. McCotter*, (9th Cir. 1986). Judge Alvarez's racially intoned comments, during Movant's sentencing has left Movant with the definite impression of racial bias, on the part of Judge Alvarez. This bias will undoubtedly prejudice the outcome of any of Movant's future proceedings, where Judge Alvarez is presiding. Movant lacks confidence in Judge Alvarez's impartiality, as an effective fact-finder.

I have read the foregoing Statement on this one page and swear under penalty of perjury that it is true and correct to the best of my knowledge.

Signed: J. L. Cesar Gonzalez Hernandez

Dated: 2-22-24

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

UNITED STATES DISTRICT COURT

for the

Gonzalez-Hernandez)	
<i>Plaintiff/Petitioner</i>)	
v.)	
United States)	2255
<i>Defendant/Respondent</i>)	Civil Action No.

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: Sandstone F.C.I.
 If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

My gross pay or wages are: \$ 0.00, and my take-home pay or wages are: \$ 0.00 per
 (specify pay period) _____.

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

(a) Business, profession, or other self-employment	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
(b) Rent payments, interest, or dividends	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
(c) Pension, annuity, or life insurance payments	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
(d) Disability, or worker's compensation payments	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
(e) Gifts, or inheritances	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
(f) Any other sources	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

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4. Amount of money that I have in cash or in a checking or savings account: \$ 0.00.

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (describe the property and its approximate value):

N/A

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (describe and provide the amount of the monthly expense):

N/A

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

N/A

8. Any debts or financial obligations (describe the amounts owed and to whom they are payable):

N/A

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date:

2-23-24

Julio Cesar Gonzalez Hernandez
Applicant's signature

Julio Cesar Gonzalez Hernandez
Printed name

I currently have no assets and my account has been frozen.



~~██████████~~ Federal correctional Institution

P.O. BOX. 1000

Sandstone. ~~AD~~Mn. 55072

⇌66818-019⇌

Court Clerk
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Benson Tower
McAllen, TX 78501
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